

Chapter 2

Possession of Depository Institution by Commissioner

7-2-1 Supervisory actions by commissioner -- Grounds -- Mergers or acquisitions authorized by commissioner -- Possession of business and property taken by commissioner.

- (1) An institution under the jurisdiction of the department is subject to supervisory actions by the commissioner under this chapter or Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies, if the commissioner, with or without an administrative hearing, finds that:
- (a) the institution is not in a safe and sound condition to transact its business;
 - (b) an officer of the institution or other person has refused to be examined or has made false statements under oath regarding its affairs;
 - (c) the institution or other person has violated its articles of incorporation or any law, rule, or regulation governing the institution or other person;
 - (d) the institution or other person is conducting its business in an unauthorized or unsafe manner, or is practicing deception upon its depositors, members, or the public, or is engaging in conduct injurious to its depositors, members, or the public;
 - (e) the institution or other person has been notified by its primary account insurer of the insurer's intention to initiate proceedings to terminate insurance;
 - (f) the institution or other person has failed to maintain a minimum amount of capital as required by the department, any state, or the relevant federal regulatory agency;
 - (g) the institution or other person is a depository institution that has failed or refused to pay its depositors in accordance with the terms under which the deposits were received, or has or is about to become insolvent;
 - (h) the institution or other person or its officers or directors have failed or refused to comply with the terms of a legally authorized order issued by the commissioner or by any federal authority or authority of another state having jurisdiction over the institution or other person;
 - (i) the institution or other person or its officers or directors have failed or refused, upon proper demand, to submit its records, books, papers, and affairs for inspection to the commissioner or to a supervisor or an examiner of the department;
 - (j) the institution or other person or its officers or directors, after 30 days written notice, have failed to comply with or have continued to violate this title or any rule or regulation of the department issued under it;
 - (k) any person who controls the institution or other person subject to the jurisdiction of the department has used the control to cause the institution or other person to be or about to be in an unsafe or unsound condition, to conduct its business in an unauthorized or unsafe manner, or to violate this title or any rule or regulation of the department issued under it; or
 - (l) the remedies provided in Section 7-1-307, 7-1-308, or 7-1-313 are ineffective or impracticable to protect the interest of depositors, creditors, or members of the institution or other person, or to protect the interests of the public.
- (2) The commissioner may take any action described in Subsection (3) if:
- (a) he finds that:
 - (i) any of the conditions set forth in Subsection (1) exist with respect to an institution under the jurisdiction of the department; and
 - (ii) an order issued pursuant to Section 7-1-307, 7-1-308, or 7-1-313 would not adequately protect the interests of the institution's depositors, creditors, members, or other interested persons from all dangers presented by the conditions found to exist; or

- (b) two-thirds of the voting shares of an institution under the jurisdiction of the department that are eligible to be voted at any regular or special meeting of the shareholders of the institution are voted at the meeting in favor of a resolution consenting to the commissioner taking or causing to be taken any of the actions described below.
- (3) After making the requisite findings or receiving the consenting vote of shareholders under Subsection (2), the commissioner may:
 - (a) without taking possession of the institution, authorize, or by order require or give effect to the acquisition of control of, the merger with, the acquisition of all or a portion of the assets of, or the assumption of all or a portion of the liabilities of the institution or other person by any other institution or entity approved or designated by the commissioner in accordance with Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies; or
 - (b) take possession of the institution or other person subject to the jurisdiction of the department with or without a court order if an acquisition of control of, a merger with, an acquisition of all or a portion of the assets of, or an assumption of all or a portion of the liabilities of the institution or other person without taking possession does not appear to the commissioner to be practicable.
- (4) Upon taking possession of an institution or the person, the commissioner is vested by operation of law with the title to and the right to possession of all assets, the business, and property of the institution or other person subject to court order made under Section 7-2-3. While in possession of an institution or other person, the commissioner or any receiver or liquidator appointed by him may exercise any or all of the rights, powers, and authorities granted to the commissioner under this chapter, or may give effect to the acquisition of control of, the merger with, the acquisition of all or a portion of the assets of, or the assumption of all or a portion of the liabilities of an institution or other person subject to the jurisdiction of the department, under the provisions of Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies.
- (5) An action of the commissioner under this section may only be enjoined or set aside upon a finding, after notice and hearing, that the action is arbitrary, capricious, an abuse of discretion, or otherwise contrary to law.

Amended by Chapter 189, 2014 General Session

7-2-2 Jurisdiction of district court -- Supervision of actions of commissioner in possession -- Authority of commissioner and court.

- (1) The district court for the county in which the principal office of the institution or other person is situated has jurisdiction in the liquidation or reorganization of the institution or other person of which the commissioner has taken possession under this chapter or Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies. As used in this chapter, "court" means the court given jurisdiction by this provision.
- (2) Before taking possession of an institution or other person under his jurisdiction, or within a reasonable time after taking possession of an institution or other person without court order, as provided in this chapter, the commissioner shall cause to be commenced in the appropriate district court, an action to provide the court supervisory jurisdiction to review the actions of the commissioner.
- (3) The actions of the commissioner are subject to review of the court. The court has jurisdiction to hear all objections to the actions of the commissioner and may rule upon all motions and actions coming before it. Standing to seek review of any action of the commissioner or any

receiver or liquidator appointed by him is limited to persons whose rights, claims, or interests in the institution would be adversely affected by the action.

- (4) The authority of the commissioner under this chapter is of an administrative and not judicial receivership. The court may not overrule a determination or decision of the commissioner if it is not arbitrary, capricious, fraudulent, or contrary to law. If the court overrules an action of the commissioner, the matter shall be remanded to the commissioner for a new determination by him, and the new determination shall be subject to court review.

Amended by Chapter 189, 2014 General Session

7-2-3 Action for injunction against commissioner in possession -- Procedure -- Appeal.

- (1)
- (a) Whenever any institution or other person of which the commissioner has taken possession considers itself aggrieved by the taking, it may within 10 days after the taking apply to the court to enjoin further proceedings.
 - (b) After ordering the commissioner to show cause why further proceedings should not be enjoined and after hearing the allegations and proofs of the parties and determining the facts, the court may:
 - (i) dismiss the application; or
 - (ii) enjoin the commissioner from further proceedings if the court finds the taking to be arbitrary, capricious, an abuse of discretion, or otherwise contrary to law.
 - (c) If the court enjoins further proceedings, it shall order the commissioner to surrender possession of the institution in a manner and on terms designated by the court in the public interest.
 - (d) Notice of any hearings shall be given to persons designated by the court in the manner designated by the court.
- (2) An appeal may be taken by the commissioner, a receiver, or liquidator appointed by the commissioner under Section 7-2-9, or by the institution from the judgment of the court as provided by law. An appeal from the judgment does not stay any judgment in favor of the commissioner, or a receiver or liquidator appointed by him. If the appeal is taken by the commissioner, or by a receiver or liquidator appointed by him, no bond is required. If the appeal is taken by the institution, a bond is required as provided by the Utah Rules of Civil Procedure.

Amended by Chapter 200, 1994 General Session

7-2-4 Consent required for institution to resume business.

The institution or other person may resume business only with the consent of and upon conditions approved by the commissioner. The commissioner may give his consent to resumption of business if arrangements have been made by the institution or its stockholders, by reorganization or otherwise, to the satisfaction of the commissioner, to pay all creditors of the institution, aside from the stockholders, and to remedy the default or condition for which possession was taken and to pay the expenses of the proceeding.

Amended by Chapter 8, 1983 General Session

7-2-5 Appointment of receiver or assignment for creditors -- Notice required -- Commissioner taking possession.

No receiver may be appointed by any court and no deed or assignment for the benefit of creditors may be filed in any district court within this state for any institution or other person under the jurisdiction of the commissioner, except upon notice to the commissioner, unless because of urgent necessity the court determines that it is necessary to do so to preserve the assets of the institution. The commissioner may within five days after service of the notice upon him take possession of the institution, in which case no further proceedings shall be had upon the application for the appointment of a receiver or under the deed of assignment, or, if a receiver has been appointed or the assignee has entered upon the administration of his trust, the appointment shall be vacated or the assignee shall be removed upon application of the commissioner to the court by which the receiver was appointed or in which the assignment was filed, and the commissioner shall proceed to administer the assets of the institution as provided in this chapter.

Amended by Chapter 8, 1983 General Session

7-2-6 Possession by commissioner -- Notice -- Presentation, allowance, and disallowance of claims -- Objections to claims.

- (1)
 - (a) Possession of an institution by the commissioner commences when notice of taking possession is:
 - (i) posted in each office of the institution located in this state; or
 - (ii) delivered to a controlling person or officer of the institution.
 - (b) All notices, records, and other information regarding possession of an institution by the commissioner may be kept confidential, and all court records and proceedings relating to the commissioner's possession may be sealed from public access if:
 - (i) the commissioner finds it is in the best interests of the institution and its depositors not to notify the public of the possession by the commissioner;
 - (ii) the deposit and withdrawal of funds and payment to creditors of the institution is not suspended, restricted, or interrupted; and
 - (iii) the court approves.
- (2)
 - (a)
 - (i) Within 15 days after taking possession of an institution or other person under the jurisdiction of the department, the commissioner shall publish a notice to all persons who may have claims against the institution or other person to file proof of their claims with the commissioner before a date specified in the notice.
 - (ii) The filing date shall be at least 90 days after the date of the first publication of the notice.
 - (iii) The notice shall be published:
 - (A)
 - (I) in a newspaper of general circulation in each city or county in which the institution or other person, or any subsidiary or service corporation of the institution, maintains an office; and
 - (II) published again approximately 30 days and 60 days after the date of the first publication; and
 - (B) as required in Section 45-1-101 for 60 days.
 - (b)
 - (i) Within 60 days of taking possession of a depository institution, the commissioner shall send a similar notice to all persons whose identity is reflected in the books or records of the institution as depositors or other creditors, secured or unsecured, parties to litigation

involving the institution pending at the date the commissioner takes possession of the institution, and all other potential claimants against the institution whose identity is reasonably ascertainable by the commissioner from examination of the books and records of the institution. No notice is required in connection with accounts or other liabilities of the institution that will be paid in full or be fully assumed by another depository institution or trust company. The notice shall specify a filing date for claims against the institution not less than 60 days after the date of mailing. Claimants whose claims against the institution have been assumed by another depository institution or trust company pursuant to a merger or purchase and assumption agreement with the commissioner, or a federal deposit insurance agency appointed as receiver or liquidator of the institution, shall be notified of the assumption of their claims and the name and address of the assuming party within 60 days after the claim is assumed. Unless a purchase and assumption or merger agreement requires otherwise, the assuming party shall give all required notices. Notice shall be mailed to the address appearing in the books and records of the institution.

- (ii) Inadvertent or unintentional failure to mail a notice to any person entitled to written notice under this paragraph does not impose any liability on the commissioner or any receiver or liquidator appointed by him beyond the amount the claimant would be entitled to receive if the claim had been timely filed and allowed. The commissioner or any receiver or liquidator appointed by him are not liable for failure to mail notice unless the claimant establishes that it had no knowledge of the commissioner taking possession of the institution until after all opportunity had passed for obtaining payment through filing a claim with the commissioner, receiver, or liquidator.
- (c) Upon good cause shown, the court having supervisory jurisdiction may extend the time in which the commissioner may serve any notice required by this chapter.
- (d) The commissioner has the sole power to adjudicate any claim against the institution, its property or other assets, tangible or intangible, and to settle or compromise claims within the priorities set forth in Section 7-2-15. Any action of the commissioner is subject to judicial review as provided in Subsection (9).
- (e) A receiver or liquidator of the institution appointed by the commissioner has all the duties, powers, authority, and responsibilities of the commissioner under this section. All claims against the institution shall be filed with the receiver or liquidator within the applicable time specified in this section and the receiver or liquidator shall adjudicate the claims as provided in Subsection (2)(d).
- (f) The procedure established in this section is the sole remedy of claimants against an institution or its assets in the possession of the commissioner.
- (3) With respect to a claim which appears in the books and records of an institution or other person in the possession of the commissioner as a secured claim, which, for purposes of this section is a claim that constitutes an enforceable, perfected lien, evidenced in writing, on the assets or other property of the institution:
 - (a) The commissioner shall allow or disallow each secured claim filed on or before the filing date within 30 days after receipt of the claim and shall notify each secured claimant by certified mail or in person of the basis for, and any conditions imposed on, the allowance or disallowance.
 - (b) For all allowed secured claims, the commissioner shall be bound by the terms, covenants, and conditions relating to the assets or other property subject to the claim, as set forth in the note, bond, or other security agreement which evidences the secured claim, unless the commissioner has given notice to the claimant of his intent to abandon the assets or other

property subject to the secured claim at the time the commissioner gave the notice described in Subsection (3)(a).

- (c) No petition for lifting the stay provided by Section 7-2-7 may be filed with respect to a secured claim before the claim has been filed and allowed or disallowed by the commissioner in accordance with Subsection (3)(a).
- (4) With respect to all other claims other than secured claims:
 - (a) Each claim filed on or before the filing date shall be allowed or disallowed within 180 days after the final publication of notice.
 - (b) If notice of disallowance is not served upon the claimant by the commissioner within 210 days after the date of final publication of notice, the claim is considered disallowed.
 - (c) The rights of claimants and the amount of a claim shall be determined as of the date the commissioner took possession of the institution under this chapter. Claims based on contractual obligations of the institution in existence on the date of possession may be allowed unless the obligation of the institution is dependent on events occurring after the date of possession, or the amount or worth of the claim cannot be determined before any distribution of assets of the institution is made to claimants having the same priority under Section 7-2-15.
 - (d)
 - (i) An unliquidated claim against the institution, including claims based on alleged torts for which the institution would have been liable on the date the commissioner took possession of the institution and any claims for a right to an equitable remedy for breach of performance by the institution, may be filed in an estimated amount. The commissioner may disallow or allow the claim in an amount determined by the commissioner, settle the claim in an amount approved by the court, or, in his discretion, refer the claim to the court designated by Section 7-2-2 for determination in accordance with procedures designated by the court. If the institution held on the date of possession by the commissioner a policy of insurance that would apply to the liability asserted by the claimant, the commissioner, or any receiver appointed by him may assign to the claimant all rights of the institution under the insurance policy in full satisfaction of the claim.
 - (ii) If the commissioner finds there are or may be issues of fact or law as to the validity of a claim, liquidated or unliquidated, or its proper allowance or disallowance under the provisions of this chapter, he may appoint a hearing examiner to conduct a hearing and to prepare and submit recommended findings of fact and conclusions of law for final consideration by the commissioner. The hearing shall be conducted as provided in rules or regulations issued by the commissioner. The decision of the commissioner shall be based on the record before the hearing examiner and information the commissioner considers relevant and shall be subject to judicial review as provided in Subsection (9).
 - (e) A claim may be disallowed if it is based on actions or documents intended to deceive the commissioner or any receiver or liquidator appointed by him.
 - (f) The commissioner may defer payment of any claim filed on behalf of a person who was at any time in control of the institution within the meaning of Section 7-1-103, pending the final determination of all claims of the institution against that person.
 - (g) The commissioner or any receiver appointed by him may disallow a claim that seeks a dollar amount if it is determined by the court having jurisdiction under Section 7-2-2 that the commissioner or receiver or conservator will not have any assets with which to pay the claim under the priorities established by Section 7-2-15.

- (h) The commissioner may adopt rules to establish such alternative dispute resolution processes as may be appropriate for the resolution of claims filed against an institution under this chapter.
 - (i) In establishing alternative dispute resolution processes, the commissioner shall strive for procedures that are expeditious, fair, independent, and low cost. The commissioner shall seek to develop incentives for claimants to participate in the alternative dispute resolution process.
 - (j) The commissioner may establish both binding and nonbinding processes, which may be conducted by any government or private party, but all parties, including the claimant and the commissioner or any receiver appointed by him, must agree to the use of the process in a particular case.
- (5)
- (a) Claims filed after the filing date are disallowed, unless:
 - (i) the claimant who did not file his claim timely demonstrates that he did not have notice or actual knowledge of the proceedings in time to file a timely proof of claim; and
 - (ii) proof of the claim was filed prior to the last distribution of assets. For the purpose of this subsection only, late filed claims may be allowed if proof was filed before the final distribution of assets of the institution to claimants of the same priority and are payable only out of the remaining assets of the institution.
 - (b) A late filed claim may be disallowed under any other provision of this section.
- (6) Debts owing to the United States or to any state or its subdivisions as a penalty or forfeiture are not allowed, except for the amount of the pecuniary loss sustained by the act, transaction, or proceeding out of which the penalty or forfeiture arose.
- (7) Except as otherwise provided in Subsection 7-2-15(1)(a), interest accruing on any claim after the commissioner has taken possession of an institution or other person under this chapter may be disallowed.
- (8)
- (a) A claim against an institution or its assets based on a contract or agreement may be disallowed unless the agreement:
 - (i) is in writing;
 - (ii) is otherwise a valid and enforceable contract; and
 - (iii) has continuously, from the time of its execution, been an official record of the institution.
 - (b) The requirements of this Subsection (8) do not apply to claims for goods sold or services rendered to an institution in the ordinary course of business by trade creditors who do not customarily use written agreements or other documents.
- (9)
- (a) Objection to any claim allowed or disallowed may be made by any depositor or other claimant by filing a written objection with the commissioner within 30 days after service of the notice of allowance or disallowance. The commissioner shall present the objection to the court for hearing and determination upon written notice to the claimant and to the filing party. The notice shall set forth the time and place of hearing. After the 30-day period, no objection may be filed. This Subsection (9) does not apply to secured claims allowed under Subsection (3).
 - (b) The hearing shall be based on the record before the commissioner and any additional evidence the court allowed to provide the parties due process of law.
 - (c) The court may not reverse or otherwise modify the determination of the commissioner with respect to the claim unless it finds the determination of the commissioner to be arbitrary, capricious, or otherwise contrary to law. The burden of proof is on the party objecting to the determination of the commissioner.

- (d) An appeal from any final judgment of the court with respect to a claim may be taken as provided by law by the claimant, the commissioner, or any person having standing to object to the allowance or disallowance of the claim.
- (10) If a claim against the institution has been asserted in any judicial, administrative, or other proceeding pending at the time the commissioner took possession of the institution under this chapter or under Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies, the claimant shall file copies of all documents of record in the pending proceeding with the commissioner within the time for filing claims as provided in Subsection (2). Such a claim shall be allowed or disallowed within 90 days of the receipt of the complete record of the proceedings. No application to lift the stay of a pending proceeding shall be filed until the claim has been allowed or disallowed. The commissioner may petition the court designated by Section 7-2-2 to lift the stay to determine whether the claim should be allowed or disallowed.
- (11) All claims allowed by the commissioner and not disallowed or otherwise modified by the court under Subsection (9), if not paid within 30 days after allowance, shall be evidenced by a certificate payable only out of the assets of the institution in the possession of the commissioner, subject to the priorities set forth in Section 7-2-15. This provision does not apply to a secured claim allowed by the commissioner under Subsection (3)(a).

Amended by Chapter 258, 2015 General Session

7-2-7 Stay of proceedings against institution -- Relief.

- (1) Except as otherwise specified, a taking of an institution or other person by the commissioner or a receiver or liquidator appointed by the commissioner under this chapter operates as a stay of the commencement or continuation of the following with respect to the institution:
 - (a) any judicial, administrative, or other proceeding, including service of process;
 - (b) the enforcement of any judgment;
 - (c) any act to obtain possession of property;
 - (d) any act to create, perfect, or enforce any lien against property of the institution;
 - (e) any act to collect, assess, or recover a claim against the institution; and
 - (f) the setoff of any debt owing to the institution against any claim against the institution.
- (2) Except as provided in Subsections (3), (4), (5), and (8):
 - (a) the stay of any action against property of the institution continues until the institution has no interest in the property; and
 - (b) the stay of any other action continues until the earlier of when the case is:
 - (i) closed; or
 - (ii) dismissed.
- (3) On the motion of any party in interest and after notice and a hearing, the court may terminate, annul, modify, condition, or otherwise grant relief from the stay:
 - (a) for cause, including the lack of adequate protection of an interest in property of the party in interest; or
 - (b) with respect to a stay of any action against property if:
 - (i) the institution does not have an equity interest in the property; and
 - (ii) the property would have no value in a reorganization or liquidation of the institution.
- (4)
 - (a) Thirty days after a request under Subsection (3) for relief from the stay of any act against property of the institution, the stay is terminated with respect to the party in interest making the request unless the court, after notice and a hearing, orders the stay continued in

effect pending the conclusion of, or as a result of, a final hearing and determination under Subsection (3).

- (b) A hearing under this Subsection (4) may be:
 - (i) a preliminary hearing; or
 - (ii) consolidated with the final hearing under Subsection (3).
- (c) The court shall order the stay continued in effect pending the conclusion of the final hearing under Subsection (3) if there is a reasonable likelihood that the party opposing relief from the stay will prevail at the conclusion of the final hearing.
- (d) If the hearing under this Subsection (4) is a preliminary hearing, the final hearing shall be commenced not later than 30 days after the conclusion of the preliminary hearing.
- (5) Upon request of a party in interest, the court, with or without a hearing, may grant relief from the stay provided under Subsection (1) to the extent necessary to prevent irreparable damage to the interest of an entity in property, if the interest will or could be damaged before there is an opportunity for notice and a hearing under Subsection (3) or (4).
- (6) In any hearing under Subsection (3) or (4) concerning relief from the stay of any act under Subsection (1):
 - (a) the party requesting relief has the burden of proof on the issue of the institution's equity in property; and
 - (b) the party opposing relief has the burden of proof on all other issues.
- (7) A person injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees and, when appropriate, may recover punitive damages.
- (8) Nothing in this section prevents the holder or the trustee for any holder of any bond, note, debenture, or other evidence of indebtedness issued by a city, county, municipal corporation, commission, district, authority, agency, subdivision, or other public body pursuant to Title 11, Chapter 17, Utah Industrial Facilities and Development Act, from exercising any rights it may have to sell, take possession of, foreclose upon, or enforce a lien against or security interest in property of an institution that has been pledged, assigned, or mortgaged as collateral for that bond, note, debenture, or evidence of indebtedness, or as collateral for a letter of credit or other instrument issued in support of that bond, note, debenture, or evidence of indebtedness.
- (9) Notice of any hearing under this section shall be served as provided in Subsection 7-2-9(6).

Amended by Chapter 324, 2010 General Session

7-2-8 Special deputies or agents -- Appointment -- Bond.

The commissioner may appoint one or more special deputies or agents to assist him in the proceedings. The commissioner may fix the compensation of any agent appointed to assist him. The commissioner may require from agents security for the faithful discharge of their duties. All bonds given under this section shall be deposited with the commissioner and kept in his office.

Enacted by Chapter 8, 1983 General Session

7-2-9 Conservatorship, receivership, or liquidation of institution -- Appointment of receiver -- Review of actions.

- (1) Upon taking possession of the institution, the commissioner may appoint a receiver to perform the duties of the commissioner. Subject to any limitations, conditions, or requirements specified by the commissioner and approved by the court, a receiver shall have all the powers and duties of the commissioner under this chapter and the laws of this state to act as a conservator,

receiver, or liquidator of the institution. Actions of the commissioner in appointing a receiver shall be subject to review only as provided in Section 7-2-2.

- (2)
- (a) If the deposits of the institution are to any extent insured by a federal deposit insurance agency, the commissioner may appoint that agency as receiver. After receiving notice in writing of the acceptance of the appointment, the commissioner shall file a certificate of appointment in the commissioner's office and with the clerk of the district court. After the filing of the certificate, the possession of all assets, business, and property of the institution is considered transferred from the institution and the commissioner to the agency, and title to all assets, business, and property of the institution is vested in the agency without the execution of any instruments of conveyance, assignment, transfer, or endorsement.
 - (b) If a federal deposit insurance agency accepts an appointment as receiver, it has all the powers and privileges provided by the laws of this state and the United States with respect to the conservatorship, receivership, or liquidation of an institution and the rights of its depositors, and other creditors, including authority to make an agreement for the purchase of assets and assumption of deposit and other liabilities by another depository institution or take other action authorized by Title 12 of the United States Code to maintain the stability of the banking system. Such action by a federal deposit insurance agency may be taken upon approval by the court, with or without prior notice. Such actions or agreements may be disapproved, amended, or rescinded only upon a finding by the court that the decisions or actions of the receiver are arbitrary, capricious, fraudulent, or contrary to law. In the event of any conflict between state and federal law, including provisions for adjudicating claims against the institution or receiver, the receiver shall comply with the federal law and any resulting violation of state law does not by itself constitute grounds for the court to disapprove the actions of the receiver or impose any penalty for such violation.
 - (c) The commissioner or any receiver appointed by him shall possess all the rights and claims of the institution against any person whose breach of fiduciary duty or violations of the laws of this state or the United States applicable to depository institutions may have caused or contributed to a condition which resulted in any loss incurred by the institution or to its assets in the possession of the commissioner or receiver. As used in this Subsection (2)(c), fiduciary duty includes those duties and standards applicable under statutes and laws of this state and the United States to a director, officer, or other party employed by or rendering professional services to a depository institution whose deposits are insured by a federal deposit insurance agency. Upon taking possession of an institution, no person other than the commissioner or receiver shall have standing to assert any such right or claim of the institution, including its depositors, creditors, or shareholders unless the right or claim has been abandoned by the commissioner or receiver with approval of the court. Any judgment based on the rights and claims of the commissioner or receiver shall have priority in payment from the assets of the judgment debtors.
 - (d) For the purposes of this section, the term "federal deposit insurance agency" shall include the Federal Deposit Insurance Corporation, the National Credit Union Administration and any departments thereof or successors thereto, and any other federal agency authorized by federal law to act as a conservator, receiver, and liquidator of a federally insured depository institution, including the Resolution Trust Corporation and any department thereof or successor thereto.
- (3) The receiver may employ assistants, agents, accountants, and legal counsel. If the receiver is not a federal deposit insurance agency, the compensation to be paid such assistants, agents, accountants, and legal counsel shall be approved by the commissioner. All expenses incident

to the receivership shall be paid out of the assets of the institution. If a receiver is not a federal deposit insurance agency, the receiver and any assistants and agents shall provide bond or other security specified by the commissioner and approved by the court for the faithful discharge of all duties and responsibilities in connection with the receivership including the accounting for money received and paid. The cost of the bond shall be paid from the assets of the institution. Suit may be maintained on the bond by the commissioner or by any person injured by a breach of the condition of the bond.

- (4)
- (a) Upon the appointment of a receiver for an institution in possession pursuant to this chapter, the commissioner and the department are exempt from liability or damages for any act or omission of any receiver appointed pursuant to this section.
 - (b) This section does not limit the right of the commissioner to prescribe and enforce rules regulating a receiver in carrying out its duties with respect to an institution subject to the jurisdiction of the department.
 - (c) Any act or omission of the commissioner or of any federal deposit insurance agency as a receiver appointed by him while acting pursuant to this chapter shall be deemed to be the exercise of a discretionary function within the meaning of Section 63G-7-301 of the laws of this state or Section 28 U.S.C. 2680(a) of the laws of the United States.
- (5) Actions, decisions, or agreements of a receiver under this chapter, other than allowance or disallowance of claims under Section 7-2-6, shall be subject to judicial review only as follows:
- (a) A petition for review shall be filed with the court having jurisdiction under Section 7-2-2 not more than 90 days after the date the act, decision, or agreement became effective or its terms are filed with the court.
 - (b) The petition shall state in simple, concise, and direct terms the facts and principles of law upon which the petitioner claims the act, decision, or agreement of the receiver was or would be arbitrary, capricious, fraudulent, or contrary to law and how the petitioner is or may be damaged thereby. The court shall dismiss any petition which fails to allege that the petitioner would be directly injured or damaged by the act, decision, or agreement which is the subject of the petition. Rule 11 of the Utah Rules of Civil Procedure shall apply to all parties with respect to the allegations set forth in a petition or response.
 - (c) The receiver shall have 30 days after service of the petition within which to respond.
 - (d) All further proceedings are to be conducted in accordance with the Utah Rules of Civil Procedure.
- (6) All notices required under this section shall be made in accordance with the Utah Rules of Civil Procedure and served upon the attorney general of the state of Utah, the commissioner of financial institutions, the receiver of the institution appointed under this chapter, and upon the designated representative of any party in interest who requests in writing such notice.

Amended by Chapter 378, 2010 General Session

7-2-10 Inventory of assets -- Listings of claims -- Report of proceedings -- Filing -- Inspection.

As soon as is practical after taking possession of an institution the commissioner, or any receiver or liquidator appointed by him, shall make or cause to be made in duplicate an inventory of its assets, one copy to be filed in his office and one with the clerk of the district court. Upon the expiration of the time fixed for presentation of claims the commissioner, or any receiver or liquidator appointed by him, shall make in duplicate a full and complete list of the claims presented, including and specifying claims disallowed by him, of which one copy shall be filed in his office

and one copy in the office of the clerk of the district court. The commissioner, or any receiver or liquidator appointed by him, shall in like manner make and file supplemental lists showing all claims presented after the filing of the first list. The supplemental lists shall be filed every six months and at least 15 days before the declaration of any dividend. At the time of the order for final distribution the commissioner, or any receiver or liquidator appointed by him, shall make a report in duplicate of the proceeding, showing the disposition of the assets and liabilities of the institution, one copy to be filed in his office and one with the clerk of the district court. The accounting, inventory, and lists of claims shall be open at all reasonable times for inspection. Any objection to any report or accounting shall be filed with the clerk of the district court within 30 days after the report of accounting has been filed by the commissioner, or any receiver or liquidator appointed by him, and shall be subject to judicial review only as provided in Section 7-2-9.

Amended by Chapter 378, 2010 General Session

7-2-11 Special counsel -- Employment by attorney general.

Upon taking possession of any institution or other person subject to the jurisdiction of the department, the commissioner may request the attorney general to employ special counsel on his behalf to assist and advise him in connection with a liquidation or reorganization proceeding and the prosecution or defense of any action or proceeding connected with it.

Enacted by Chapter 8, 1983 General Session

7-2-12 Powers of commissioner in possession -- Sale of assets -- Postpossession financing -- New deposit instruments -- Executory contracts -- Transfer of property -- Avoidance of transfers -- Avoidable preferences -- Setoff.

- (1) Upon taking possession of the institution, the commissioner may do all things necessary to preserve its assets and business, and shall rehabilitate, reorganize, or liquidate the affairs of the institution in a manner he determines to be in the best interests of the institution's depositors and creditors. Any such determination by the commissioner may not be overruled by a reviewing court unless it is found to be arbitrary, capricious, fraudulent, or contrary to law. In the event of a liquidation, he shall collect all debts due and claims belonging to it, and may compromise all bad or doubtful debts. He may sell, upon terms he may determine, any or all of the property of the institution for cash or other consideration. The commissioner shall give such notice as the court may direct to the institution of the time and place of hearing upon an application to the court for approval of the sale. The commissioner shall execute and deliver to the purchaser of any property of the institution sold by him those deeds or instruments necessary to evidence the passing of title.
- (2) With approval of the court and upon terms and with priority determined by the court, the commissioner may borrow money and issue evidence of indebtedness. To secure repayment of the indebtedness, he may mortgage, pledge, transfer in trust, or hypothecate any or all of the property of the institution superior to any charge on the property for expenses of the proceeding as provided in Section 7-2-14. These loans may be obtained for the purpose of facilitating liquidation, protecting or preserving the assets in the charge of the commissioner, expediting the making of distributions to depositors and other claimants, aiding in the reopening or reorganization of the institution or its merger or consolidation with another institution, or the sale of all of its assets. Neither the commissioner nor any special deputy or other person lawfully in charge of the affairs of the institution is under any personal obligation to repay those loans. The commissioner may take any action necessary or proper to consummate the loan

and to provide for its repayment and to give bond when required for the faithful performance of all undertakings in connection with it. The commissioner or special deputy shall make application to the court for approval of any loan proposed under this section. Notice of hearing upon the application shall be given as the court directs. At the hearing upon the application any stockholder or shareholder of the institution or any depositor or other creditor of the institution may appear and be heard on the application. Prior to the obtaining of a court order, the commissioner or special deputy in charge of the affairs of the institution may make application or negotiate for the loan or loans subject to the obtaining of the court order.

- (3) With the approval of the court pursuant to a plan of reorganization or liquidation under Section 7-2-18, the commissioner may provide for depositors to receive new deposit instruments from a depository institution that purchases or receives some or all of the assets of the institution in the possession of the commissioner. All new deposit instruments issued by the acquiring depository institution may, in accordance with the terms of the plan of reorganization or liquidation, be subject to different amounts, terms, and interest rates than the original deposit instruments of the institution in the possession of the commissioner. All deposit instruments issued by the acquiring institution shall be considered new deposit obligations of the acquiring institution. The original deposit instruments issued by the institution in the possession of the commissioner are not liabilities of the acquiring institution, unless assumed by the acquiring institution. Unpaid claims of depositors against the institution in the possession of the commissioner continue, and may be provided for in the plan of reorganization or liquidation.
- (4) The commissioner, after taking possession of any institution or other person subject to the jurisdiction of the department, may terminate any executory contract, including standby letters of credit, unexpired leases and unexpired employment contracts, to which the institution or other person is a party. If the termination of an executory contract or unexpired lease constitutes a breach of the contract or lease, the date of the breach is the date on which the commissioner took possession of the institution. Claims for damages for breach of an executory contract shall be filed within 30 days of receipt of notice of the termination, and if allowed, shall be paid in the same manner as all other allowable claims of the same priority out of the assets of the institution available to pay claims.
- (5) With approval of the court and upon a showing by the commissioner that it is in the best interests of the depositors and creditors, the commissioner may transfer property on account of an indebtedness incurred by the institution prior to the date of the taking.
- (6)
 - (a) The commissioner may avoid any transfer of any interest of the institution in property or any obligation incurred by the institution that is void or voidable by a creditor under Title 25, Chapter 6, Uniform Fraudulent Transfer Act.
 - (b) The commissioner may avoid any transfer of any interest in real property of the institution that is void as against or voidable by a subsequent purchaser in good faith and for a valuable consideration of the same real property or any portion thereof who has duly recorded his conveyance at the time possession of the institution is taken, whether or not such a purchaser exists.
 - (c) The commissioner may avoid any transfer of any interest in property of the institution or any obligation incurred by the institution that is invalid or void as against, or is voidable by a creditor that extends credit to the institution at the time possession of the institution is taken by the commissioner, and that obtains, at such time and with respect to such credit, a judgment lien or a lien by attachment, levy, execution, garnishment, or other judicial lien on the property involved, whether or not such a creditor exists.

- (d) The right of the commissioner under Subsections (6)(b) and (c) to avoid any transfer of any interest in property of the institution shall be unaffected by and without regard to any knowledge of the commissioner or of any creditor of the institution.
 - (e) "Transfer" means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, or disposing of or parting with property or with an interest in property, including retention of title as a security interest.
 - (f) The commissioner may avoid and recover any payment or other transfer of any interest in property of the institution to or for the benefit of a creditor, for or on account of an antecedent debt owed by the institution before the transfer was made if the creditor at the time of such transfer had reasonable cause to believe that the institution was insolvent, and if the payment or other transfer will allow the creditor to obtain a greater percentage of his debt than he would be entitled to under the provisions of Section 7-2-15. For the purposes of this subsection:
 - (i) antecedent debt does not include earned wages and salaries and other operating expenses incurred and paid in the normal course of business;
 - (ii) a transfer of any interest in real property is deemed to have been made or suffered when it became so far perfected that a subsequent good faith purchaser of the property from the institution for a valuable consideration could not acquire an interest superior to the transferee; and
 - (iii) a transfer of property other than real property is deemed to have been made or suffered when it became so far perfected that a creditor on a simple contract could not acquire a lien by attachment, levy, execution, garnishment, or other judicial lien superior to the interest of the transferee.
 - (g) For purposes of this section, "date of possession" means the earlier of the date the commissioner takes possession of a financial institution under Title 7, Chapter 2, Possession of Depository Institution by Commissioner, or the date when the commissioner enters an order suspending payments to depositors and other creditors under Section 7-2-19.
- (7)
- (a) With or without the prior approval of the court, the commissioner or any federal deposit insurance agency appointed by him as receiver or liquidator of a depository institution closed by the commissioner under the provisions of this chapter may setoff against the deposits or other liabilities of the institution any debts or other obligations of the depositor or claimant due and owing to the institution. The amount of any setoff against the liabilities of the institution shall be no greater than the amount the depositor or claimant would receive pursuant to Section 7-2-15 after final liquidation of the institution. When the liquidation value of a depositor's or claimant's claim against the institution will or may be less than the full amount of the claim, setoff may be made prior to final liquidation if the commissioner or any receiver or liquidator appointed by him can reasonably estimate the liquidation value of the claim, and the court, after notice and opportunity for hearing, approves the estimate for purposes of making the setoff. If the right of setoff is exercised, the commissioner or any receiver or liquidator appointed by him shall give written notice to the depositor or claimant of the amount setoff.
 - (b) The existence and amount of a debtor or creditor relationship or both, between the institution and its depositor or claimant and the right to the proceeds in a deposit account shall be determined solely by the books and records of the institution.
 - (c) Any contract purporting to affect the right of setoff shall be in writing and signed by the depositor-debtor and an authorized officer of the institution and be maintained as a part of the records of the institution.

- (d) Any claim that a deposit account is a special account not subject to setoff because it was maintained for a specific purpose or to satisfy a particular obligation other than satisfaction of or as security for an indebtedness to the institution or that the right to the deposit actually belongs to a third party does not affect the right to setoff of the commissioner or any receiver or liquidator appointed by him unless the special nature of the account is clearly shown in the books and records of the institution.
- (e) In the absence of any other instrument in writing, the terms and provisions of the signature card applicable to a particular account in effect at the time the commissioner takes possession of the institution shall be determinative of the right of setoff by the commissioner or any receiver or liquidator appointed by him.
- (f) Knowledge of the institution or of any director, officer, or employee of the institution that the nature of the account is other than as shown in the books and records of the institution does not affect the right of setoff by the commissioner or any receiver or liquidator appointed by him.
- (g) The liability of the commissioner or any receiver or liquidator appointed by him for exercising a right of setoff other than as authorized by this section shall be only to a person who establishes by the procedure set forth in Section 7-2-6 that his interest in the account is superior to that of the person whose debt to the institution was setoff against the account. The amount of any such liability shall be no greater than the amount of the setoff and neither the commissioner or any receiver or liquidator appointed by him shall be liable for any action taken under this section unless the action taken is determined by the court to be arbitrary or capricious.

Amended by Chapter 189, 2014 General Session

7-2-13 Collections in liquidation -- Deposit -- Preference.

The money collected in process of a liquidation by the commissioner shall be from time to time deposited, subject to his order as herein provided, in one or more federally insured depository institutions organized under the laws of this state. In case of the suspension or insolvency of the depository institution, these deposits shall be preferred before all other deposits.

Enacted by Chapter 16, 1981 General Session

7-2-14 Expenses during possession.

The expenses reimbursable to the commissioner during possession or in the course of proceedings under this chapter include the compensation of deputies, agents, clerks, and examiners employed by him and reasonable fees for counsel, accountants or consultants employed by him or on his behalf. The compensation shall be fixed by the commissioner subject to the approval of the court. The expenses of the proceedings shall be paid out of the property of the institution in the hands of the commissioner, shall be a valid charge against that property, and shall be paid first in order of priority. No expenses may be paid out of the property of the institution until an account of the expense has been filed with and approved by the court.

Amended by Chapter 8, 1983 General Session

7-2-15 Priority of obligations, expenses, and claims -- Distribution of balance of assets.

- (1) The following obligations, expenses, and claims have the following priority:

- (a) first, any obligation the commissioner may have under Subsection 7-2-6(3)(b) to be bound by the terms, covenants, and conditions of obligations secured by assets or property of the institution;
 - (b) second, administrative expenses, including those allowed under Section 7-2-14;
 - (c) third, unsecured claims for wages, salaries, or commissions, including vacation, severance, or sick leave pay, earned by an individual within 90 days before the date of the commissioner's possession, in an amount not exceeding \$2,000 for each individual;
 - (d) fourth, claims of depositors. Any federal deposit insurance agency or other deposit insurer is subrogated to all rights of the depositors against the institution, its officers and directors, and its persons in control of the institution as control is defined in Section 7-1-103 to the extent of all payments made for the benefit of the depositors. "Payments," as used in this subsection, includes arrangements by a federal deposit insurance agency for the assumption or payment of the deposit liabilities by another institution whose deposits are insured by a federal deposit insurance agency. The right of any agency of the United States insuring deposits or savings obligations to be subrogated to the rights of depositors upon payment of their claims may not be less extensive than the law of the United States provides with respect to subrogation to the rights of depositors in national banks. For the purposes of this section, a contractual commitment to advance funds, including a standby letter of credit, may not be considered a deposit liability of the institution;
 - (e) fifth, all other unsecured claims in amounts allowed by the court, including claims of secured creditors to the extent the amount of their claims exceed the present fair market value of their collateral. The claim of a lessor for damages resulting from the termination of a lease of property may not be allowed in an amount in excess of the rent reserved by the lease, without acceleration, for 60 days after the lessor repossessed the leased property, or the leased property was surrendered to the lessor, whichever first occurs, whether before or after the commissioner took possession of the institution, plus any unpaid rent due under the lease, without acceleration, on the date of possession or surrender. A claim for damages resulting from the termination of an employment contract, may not be allowed in an amount in excess of the compensation provided by the contract, without acceleration, for 90 days after the employee was directed to terminate, or the employee terminated, performance under the contract, whichever first occurs, whether before or after the commissioner took possession of the institution, plus any unpaid compensation due under the contract, without acceleration, on the date the employee was directed to terminate or the employee terminated performance. Claims for damages resulting from the termination of employment contracts of persons who were in control of the institution, as control is defined in Section 7-1-103, are not entitled to priority under this subsection. Claims for damages for breach of a commitment to advance funds shall be limited to the amount due and owing by the institution on the date the commissioner took possession of the institution;
 - (f) sixth, claims for debt that are subordinated under the provisions of a subordination agreement or other instrument;
 - (g) seventh, claims of persons who were at any time in control of the institution as control is defined in Section 7-1-103; and
 - (h) eighth, all other claims.
- (2) The commissioner shall classify each claim presented for priority purposes under Subsection (1) and shall indicate the classification on any certificate issued under the provisions of Subsection 7-2-6(11). This classification is final, subject to review by the court upon a timely objection filed under Subsection 7-2-6(9).

- (3) When the commissioner has paid to each depositor and creditor of the institution whose claims have been proved and allowed the full amount of the claim, has made proper provision for unclaimed or unpaid deposits or dividends, and has paid all the expenses of the liquidation, he shall distribute the balance of the assets of the institution in his possession among the shareholders of the institution in proportion to the holdings and classes of this stock. Unless a court of competent jurisdiction determines otherwise, the shareholders shall be determined by the books and records of the institution as of the date the commissioner took possession.

Amended by Chapter 49, 1995 General Session

7-2-16 Interim ratable dividends.

At any time after the expiration of the date fixed for the presentation of claims and prior to the declaration of a final dividend the commissioner may, out of the funds remaining in his hands after the payment of expenses, declare and pay, subject to their priorities established under Section 7-2-15, one or more interim ratable dividends to any person and in the amount and upon such notice as the court directs.

Amended by Chapter 267, 1989 General Session

7-2-17 Disposition of records after liquidation.

After liquidation of an institution under this chapter, the commissioner shall dispose of its books, papers, and records in accordance with the order of the court.

Enacted by Chapter 16, 1981 General Session

7-2-18 Plan for reorganization or liquidation of institution -- Hearing -- Procedure -- Effect -- Appeals.

- (1) If the commissioner has taken possession of any institution or other person under the jurisdiction of the department he may propose to the court a plan for the reorganization or liquidation of the institution or the establishment of a new institution by filing a petition with the court, setting forth the details of the plan and requesting the court to set a day for hearing on the petition.
- (2) The court shall make an order fixing a day for the hearing of the petition, prescribing the manner in which notice of the hearing is given, and may prescribe a deadline for filing written objections. The court may adjourn the hearing from time to time and no further notice is required. At the time of hearing or any adjournment of a hearing the court shall take testimony, and if it appears that it is in the best interests of the depositors and other creditors, the court shall approve the plan.
- (3) A plan of reorganization or liquidation approved by the court shall be fully binding upon and constitute a final adjudication of all claims, rights, and interests of all depositors, creditors, shareholders, and members of the institution being reorganized or liquidated, and all other parties in interest with regard to the plan and with regard to any institution or other person receiving any assets or assuming any liabilities under the plan.
- (4) Notice of an appeal of an order approving a plan of reorganization or liquidation shall be filed within 10 days after the date of entry of the order appealed from.

Amended by Chapter 1, 1986 Special Session 4

Amended by Chapter 1, 1986 Special Session 4

7-2-19 Suspension of payments by institution -- Order of commissioner -- Approval of governor -- Period effective -- Exempt payments -- Operation during suspension -- Modification of orders -- Adoption of rules and regulations.

- (1) The commissioner, whenever in his opinion the action is necessary in the public interest, may, if the governor approves, order such institutions as are subject to his supervision to suspend the payment in any manner of their respective liabilities to their depositors and other creditors, except as hereinafter provided.
- (2) The order shall become effective upon notice, and shall continue in full force and effect until rescinded or modified by him. No such order shall be issued for an initial period of more than 60 days, but any such order may, if the governor approves, be extended from time to time for further periods not exceeding 60 days each.
- (3) Nothing contained in this chapter shall affect the right of the institutions to pay current operating expenses and other liabilities incurred during a period of suspension.
- (4) Whenever in the opinion of the commissioner conditions warrant such action, he may, if the governor approves, authorize the issuance of clearing house certificates, post notes or other evidences of indebtedness, either during a period of suspension, or during such longer period as he may prescribe, and during a period of suspension, he may permit the suspended institution to receive deposits and may authorize any such institution to pay any part of its liabilities, or of any class thereof, payment of which has been suspended.
- (5) He may, if the governor approves, at any time, by order, modify or rescind any or all previous orders made by him under authority of this chapter.
- (6) The commissioner may, if the governor approves, prescribe such rules and regulations as he considers necessary in order to carry out the provisions of this chapter, and an order may be issued on such terms and conditions as may be incorporated in the order.

Enacted by Chapter 16, 1981 General Session

7-2-21 Applicability of Utah Procurement Code.

No action of the commissioner taken under this chapter or Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies, is subject to the provisions of Title 63G, Chapter 6a, Utah Procurement Code.

Amended by Chapter 347, 2012 General Session

7-2-22 Termination of authority to transact business.

If an institution or other person subject to the jurisdiction of the department is operated by a federal deposit insurance agency or its appointee pursuant to a federal receivership or conservatorship for a period of 180 days or more, the authority of that institution or person to transact business under this title shall terminate upon the expiration of the 180-day period.

Enacted by Chapter 229, 1987 General Session

7-2-23 Limitation of action -- Tolling of period.

- (1) If applicable law, an order entered in any proceeding, any cause of action arising under this chapter, or an agreement, fixes a period within which the institution, the commissioner, or any receiver or liquidator appointed under Section 7-2-9 may commence an action, and the period

has not expired before the date of possession by the commissioner, the receiver or liquidator may commence an action only before the later of:

- (a) the end of the period;
 - (b) three years after the date of appointment of a receiver or liquidator under Section 7-2-9; or
 - (c) three years after the date of possession by the commissioner.
- (2) No statute of limitations as to any cause of action against an officer or director of a depository institution begins to run as to the commissioner or any receiver or liquidator appointed under Section 7-2-9 until the date the commissioner takes possession of the institution under this chapter.

Enacted by Chapter 267, 1989 General Session